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In the Supreme Court of the United States

No. ------

JAMES C. DAVIS, Agent provided for by the Transportation Act, 1920, *Petitioner,*

vs.

L. D. ALEXANDER and FRANK GRIFFITH, *Respondents.*

PETITION FOR WRIT OF CERTIORARI

To the Honorable The Supreme Court of the United States:

Your petitioner, James C. Davis, Agent designated by the President, as provided by the Transportation Act, 1920, most respectfully represents and shows to this Honorable Court:

That in September, 1921 respondents, L. D. Alexander and Frank Griffith, brought suit in the District Court of Oklahoma County, State of Oklahoma, against "James C. Davis, Agent, United

States Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under Transportation Act of 1920", seeking recovery of damages alleged to have been suffered by them by reason of negligent delay and rough handling by the agents and servants of the Director General of Railroads in the transportation of certain cattle shipped by respondents from Campana, New Mexico to the stock yards at Oklahoma City, Oklahoma, over the El Paso & Southwestern Railroad, The Chicago, Rock Island and Gulf Railroad, and The Chicago, Rock Island and Pacific Railroad, and the Missouri, Kansas & Texas Railroad during Federal control. Service of process was had only upon the service agent of The Chicago, Rock Island and Pacific Railway Company at Oklahoma City, Oklahoma. No summons was ever served upon any agent or officer of The Chicago, Rock Island and Gulf Railway Company. It was a Texas corporation, a non-resident of the State of Oklahoma, and had no agent or officer in the State authorized by law to be served with process.

Upon the trial it was shown that The Chicago, Rock Island and Gulf and The Chicago, Rock Island and Pacific Railroads were the several properties of two separate and distinct corporations; that The Chicago, Rock Island and Gulf Railroad was owned by The Chicago, Rock Island and Gulf Railway Company, a Texas corporation, and was situate

wholly within that State; that the rails of the two roads connected at the Texas State line; that the railroad of The Chicago, Rock Island and Pacific Railway Company was wholly outside of the State of Texas. It was further shown that the major portion of the damages, for which recovery was sought, occurred in the State of Texas and on The Chicago Rock Island and Gulf Railroad.

Over objection of petitioner the trial court permitted to be introduced in evidence annual reports made to the Oklahoma Corporation Commission by The Chicago, Rock Island and Pacific Railway Company for the years 1919 and 1920, showing its ownership of the capital stock of The Chicago, Rock Island and Gulf Railway Company.

It was the contention of petitioner at the trial that the President took over and operated the physical properties of The Chicago, Rock Island and Gulf Railway Company and of The Chicago, Rock Island and Pacific Railway Company as separate and distinct entities; that service of process being had alone upon the service agent of The Chicago, Rock Island and Pacific Railway Company the court obtained jurisdiction of defendant, this petitioner, only in so far as the cause of action arose out of and concerned the operation of that railroad, and that he could not be held liable in this suit on a cause of action arising out of the operation of the Chicago, Rock Island and Gulf Railroad.

The trial court charged that "service of proc-

ess has been had upon The Chicago, Rock Island and Pacific Railway only", but over objection of petitioner submitted for the determination of the jury the question of whether the two railroads, as taken over and operated by the President during Federal control, constituted a single system, and charged that if they so found and against petitioner the verdict should include the loss and damage incurred upon The Chicago, Rock Island and Gulf Railroad, as well as that occasioned by The Chicago, Rock Island and Pacific Railroad.

A verdict was returned against your petitioner for the entire loss and damage occasioned by both Railroads, upon which judgment was rendered.

In due time petitioner appealed from said judgment to the Supreme Court of Oklahoma, where, by consideration of that Court, the judgment against him was affirmed on the 6th day of November, 1923.

In determining the question involved the State Supreme Court states and held:

> "This suit is of such character as to authorize the action against the Federal Agent, under the provisions of the Transportation Act, 1920, and the District Court of Oklahoma County had jurisdiction to hear and determine such cause. It is conceded that process was regularly served on the service agent of the C. R. I. & P. R. R. and that the court acquired jurisdiction of the defendant, the Federal Agent, insofar as the cause of action concerned the operation of the C. R. I. & P. R. R; but it is contended that in-

asmuch as process was not served on the service agent or any officer of the C. R. I. & G. Railroad, that the court acquired no jurisdiction of the defendant as far as the plaintiffs' cause of action concerned the operation of the C. R. I. & P. Railroad. This position is not tenable, for this is not an action against these several roads but is an action against the Federal Agent. Jurisdiction was acquired over the Federal Agent as to the entire cause of action when process was served on the service agent of the C. R. I. & P. Railroad. Certainly it would not be necessary to procure service on the service agents or officers of all the railroads over which a shipment was made in order to procure service on the Federal Agent and give the court jurisdiction of the cause.

"The Director General of Railroads, while operating the railroads under Federal Control assumed by the President under Act Aug. 29, 1916, and the Federal Control Act of March 21, 1918, (Comp. St. 1918, Comp. Stat. Ann. Supp. 1919,—3115 ¾ a-315 ¾ p.). operated the railroads as a single national system of transportation under a unified head or control, and not as separate companies or systems; and the Director General was responsible for damages sustained through the negligent operation of said railroads during Federal Control, regardless of what road or roads, in the operation of which, such negligence occurred, and without regard to the relation, affiliation or association of said roads in their corporate capacity.

"Under the Transportation Act, 1920,

an action against the Federal Agent of railroads for damages, suffered from the operation of railroads under Federal Control, is an action against the United States, and not against the railroads; and service of process, within the venue provided by Transportation Act, 1920, on the Service Agent for any of the railroads, gives jurisdiction over the Federal Agent as to all of the railroads, in the operation of which during Federal Control, the damages complained of resulted.

"Instructions given, which do not affect the substantial rights of a party, although erroneous, will be considered as harmless error, and will not be reviewed by the Supreme Court on appeal."

The Supreme Court of the State of Oklahoma is the highest court of that State and its said decision is final. Your petitioner respectfully represents that he has no right to a review of the decision of the Supreme Court of Oklahoma by this Honorable Court on appeal or by writ of error.

Accompanying this petition exhibited as a part thereof and filed with it is a duly certified transcript of the record and of all proceedings had in the trial court and the Supreme Court of the State of Oklahoma.

Your petitioner believes and, therefore, asserts that the final decision of the Supreme Court of the State of Oklahoma is against the rights, privileges

and immunities of your petitioner under the statutes of the United States, especially set up and claimed in that court, and is erroneous in the following particulars:

1. The State Supreme Court wrongfully decided that the President operated the roads of the Country during Federal control, not as entities, but as a single system, and that by virtue of the Transportation Act, 1920, in a suit for damages to live stock transported over several railroads where the cause of action arose out of the negligent operation of two such railroads, process served upon the service agent of one of such roads, a connecting carrier, was sufficient to give the court jurisdiction to render judgment against the Agent designated by the President for damage occurring on another of such railroads.

2. The State Supreme Court erred in failing to decide that service of process alone upon the service agent of The Chicago, Rock Island and Pacific Railway Company conferred upon the trial court jurisdiction of petitioner only in so far as the cause of action involved arose out of the operation of that particular railroad.

Accompanying this petition and under the same cover your petitioner presents a brief, calling attention to the authoritative decisions of this and other Courts upon which he relies.

WHEREFORE, petitioner respectfully prays

FEB 1 1924

In the Supreme Court of the United States

OCTOBER TERM, 1923

No. [redacted]32

ALDEN C. DAVIS, Agent appointed for by the Transportation Act, 1920, *Petitioner*,

vs.

L. D. ALEXANDER and FRANK GRIFFITH, *Respondents*.

PETITION FOR WRIT OF CERTIORARI

No. 366
January 19, 1924.
El Reno, Okla.

that a writ of certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of Oklahoma commanding said court to duly certify and send to this Court, on a day certain to be therein designated, a full and complete transcript of the record and of all proceedings had in said Supreme Court of Oklahoma in this case, which was entitled in that court "James C. Davis, Agent, United States Railroad Administration, in charge of Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under Transportation Act of 1920, Plaintiff in Error, vs. L. D. Alexander and Frank Griffith, Defendants in Error. No. 14237", to the end that said cause may be reviewed and rightly determined in this Court as provided by law, and that your petitioner may have such relief in the premises as to this Court may seem appropriate, and that the said judgment of the Supreme Court of Oklahoma be reversed.

JAMES C. DAVIS,

Agent provided for by the Transportation Act, 1920.

By----------

C. O. Blake

W. R. Bleakmore

His Attorneys and Counsel.

State of Oklahoma,
Canadian County.

ss.

W. R. Bleakmore, being first duly sworn, upon his oath deposes and says. that he is one of the counsel for petitioner; that he prepared the above and foregoing petition for writ of certiorari; that he knows of the proceedings had therein referred to and that the allegations made and the matters and things set forth in said petition are true and correct as he verily believes.

W R Bleakmore

Subscribed and sworn to before me this 29 day of January, 1924

Arthur L March

Notary Public.

My Com. Ex. June 22 1925

In the Supreme Court of the United States

No. --------

JAMES C. DAVIS, Agent provided for by the Transportation Act, 1920, *Petitioner*,
vs.
L. D. ALEXANDER and FRANK GRIFFITH, *Respondents.*

Brief in Support of Petition for Certiorari

The final decision of the State Supreme Court is against the right of your petitioner under the Federal Control Act of March 21, 1918, c. 25, 40 Stat. at L. 451, and the Transportotion Act, 1920, 41 Stat. at L. c. 91, p. 456, especially set up and claimed by him in that court, in this: said court erroneously decided that during Federal control the railroads of the Country were operated as a single system and not as entities, and that by virtue of the Transportation Act, 1920 in a suit for damages to live stock transported over several railroads, where the cause of action arose out of the negligent operation of two of such roads, process served upon the service agent of one of such roads, a connecting carrier, was sufficient to give the court jurisdiction to render judgment against the Agent designated

by the President for loss and damage occurring on the other of such roads.

In support of this contention we cite *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, wherein this court said:

> "By the establishment of the Railroad Administration and subsequent orders of the Director General, the carrier companies were completely separated from the control and management of their systems. Managing officials were 'required to sever their relations with the particular companies and to become exclusive representatives of the United States Railroad Administration.' U. S. R. R. Adm. Bulletin No. 4, pp. 113, 114, 313. The railway employees were under its direction, and were in no way controlled by their former employers. See Bulletin No. 4, p. 168, §§ 5, 198 et seq., 330 et seq."
>
> "The President took over the physical properties, the transportation systems, and placed them under a single directing head; but he took them over as entities, and they were always dealt with as such (Bull. No. 4, p. 113). Each system was required to file its own tariffs. General Order No. 7, Null. 4, p. 151. Each was required to take an inventory of its materials and supplies. General Order No. 10, id. p. 170. Each Federal treasurer was to deal with the finances of a single system; his bank account was to be designated '(Name of Railroad), Federal Account.' General Order No. 37, id. p. 313.

Each of 165 systems was named individually in the order promulgating the wage awards of the Railroad Wage Commission. General Order No. 27, id. pp. 198, 200. And throughout the orders and circulars there are many such expressions as 'two or more railroads or boat lines under Federal Control.' See General Order No. 11, id. p. 170. It is this conception of a transportation system as an entity which dominates § 10 of the act. The systems are regarded much as ships are regarded in admiralty. They are dealt with as active, responsible parties, answerable for their own wrongs. But since levy or execution upon their property was precluded as inconsistent with the government's needs, the liability of the transportation system was to be enforced by allowing suit to be brought against whoever, as the party operating the same, was legally responsible under existing law, although it be the government."

To the same effect are:

Grandquist v *Duluth, M & N. Ry. Co.*, (Minn.) 193 N. W. 120,

Bostwick v. Director General of Railroads, (Mich.), 189 N. W. 907,

Payne, Director Gen'l of Railroads v. Lynn, (Ohio), 138 N. E. 336,

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St. Louis, B. & N. Ry. Co. v. *McLean et al*, (Tex.), 253 S. W. 248,

Payne, Agent, etc. v. Lyon, (Ga.), 114 S. E. 892.

See also *Davis* v. *Farmers Co-op. Equity Co.*

No. 270, Oct. term 1922, decided by this Court May 21, 1923.

In a later case entitled *James C. Davis, Director General and Agent* v. *L. E. Benson,* involving the identical question presented in this case, the Oklahoma Supreme Court, on December 4, 1923, said:

> "The shipment passed over the A. T. & S. F. railroad from Clovis to Amarillo, the Rock Island system from Armarillo to Oklahoma City, the Texas end of which is called the C. R. I. and Gulf and the Oklahoma part, the C. R. I. & Pacific—the former name being used in Texas, because of Texas laws requiring separate incorporation in that state, and was delivered by a short line at Oklahoma City, called the 'Belt Line, which is operated by the Missouri, Kansas and Texas Railroad, all of these railroads being under government control and operation at the time.
>
> "The undisputed evidence is that the Rock Island & Gulf was an intermediate carrier and received the cattle at Amarillo and delivered to the Rock Island & Pacific at the Oklahoma-Texas line. All the injuries suffered by reason of delay, failure to bed the cars, unloading and holding over, were suffered at Amarillo, Texas, while on the Rock Island & Gulf.
>
> "While the railroads were taken over for one purpose and operated under one control, they were taken over as separate systems and dealt with as separate sys-

tems. By General Order No. 27 the Chicago, Rock Island and Pacific Railway and the Chicago, Rock Island and Gulf Railway were designated as separate systems and presented a situation 'analogous to that which would exist if there were a general receivership of each transportation system,' and the 'substantial legal rights of persons having dealings with carriers were not to be affected by the change of control.' Then, what of the rights of the shipper, whose legal rights were not affected by the change of control? In such circumstances, in the absence of Federal Control, he couldn't recover against one system for damages suffered on another system. C. R. I. & P. Ry. Co. et al., 1 Harrington, et al., 44 Okla. 41, Oregon, Washington R. R. & Navigation Co. v. McGuinn, 258 U. S. 66, L. E. 489.

"Prior to Federal Control recovery could not be had against one railroad company for injuries suffered on the road of another railroad company, and such right has not been given either by Act of Congress, proclamation of the President or order of the Director General. Accepting the law as laid down by the Supreme Court of the United States in the Ault case, and applying it to the facts of this case, the conclusion is irresistible that the plaintiff cannot recover against the Director General in charge of the Chicago, Rock Island and Pacific Railroad for injuries suffered on the Chicago, Rock Island and Gulf Railroad."

See also *Oregon, Washington Railroad & Navigation Co.* v. *McGinn,* 258 U. S. 409.

The Chicago, Rock Island and Gulf Railway Company, a Texas corporation, was the carrier operating the Chicago, Rock Island and Gulf railroad. It was not doing business in Oklahoma, and had no service agent in that State. Process was not served upon any agent or officer of that carrier, as required by the provisions of Sec. 206 (b) Transportation Act, 1920; and, therefore, petitioner not having submitted to its jurisdiction, the state court was without authority to render judgment against him for damages caused by the operation of that road.

> "The established general rule is that any personal judgment which a state court may render against one who did not voluntarily submit to its jurisdiction, and who is not a citizen of the State, not served with process within its borders, no matter what the mode of service, is void, because the court has no jurisdiction over his person."
>
> *New York Life Ins. Co.* v. *Dunlevy,* 241 U. S. 518.

It is most respectfully urged that the writ of certiorari issue; and upon review of the proceedings

the decision of the Supreme Court of Oklahoma be reversed.

C. O. Blake

W. R. Bleakmore

Attorneys for Petitioner.

We, the undersigned, counsel for the above named respondents, L. D. Alexander and Frank Griffith, hereby acknowledge service of notice of the date of submission of the foregoing petition for writ of certiorari to the Supreme Court of the United States, on, to-wit, the 4th day of February, A. D. 1924, and receipt of a copy of said petition and brief in support thereof.

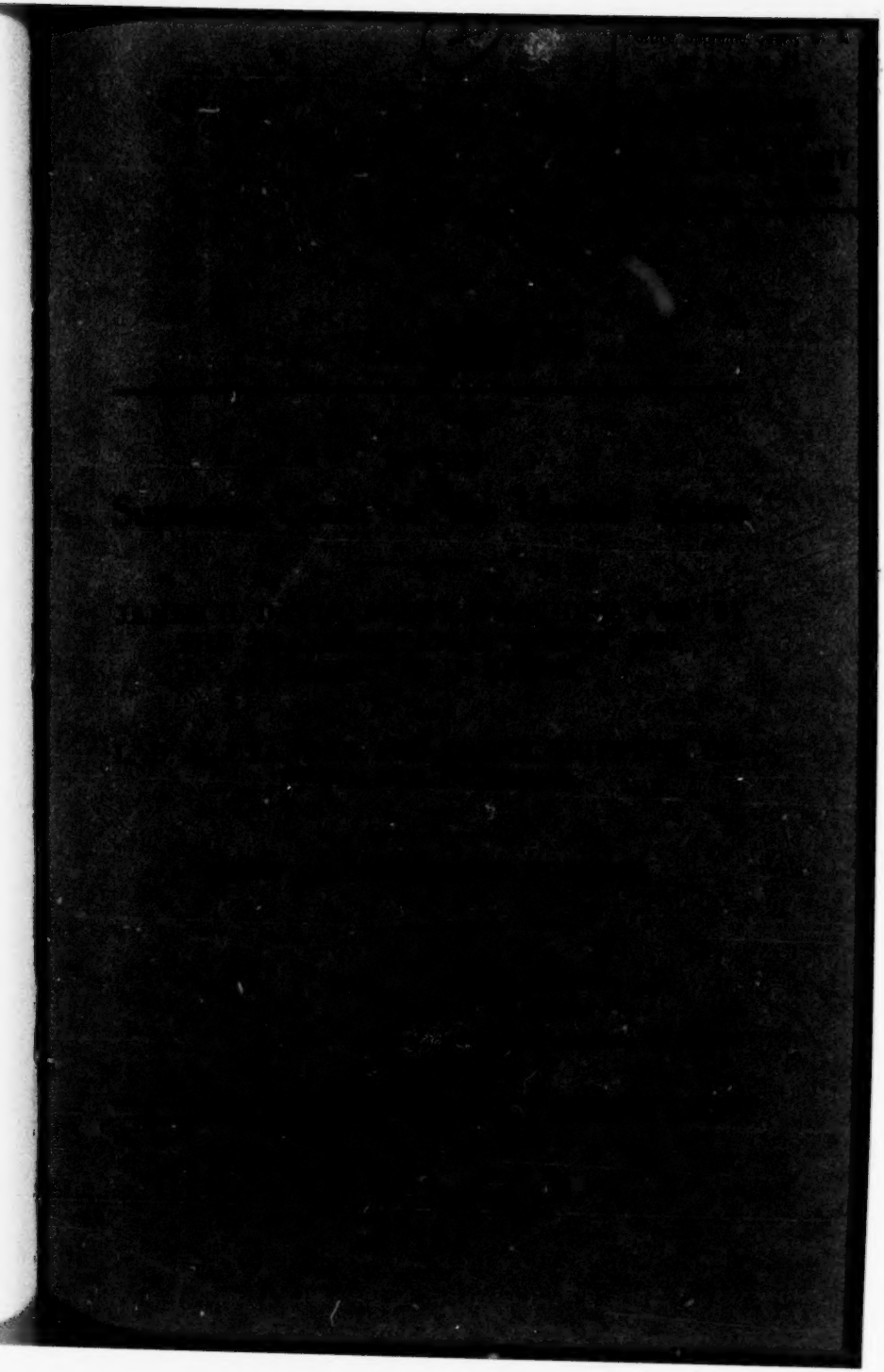
Dated this 21st day of January, A. D. 1924.

Fred E. Suits

C. E. Hall

Counsel for Respondents

L. D. Alexander and Frank Griffith,



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No. 274

IN THE

Supreme Court of the United States

JAMES C. DAVIS, AGENT, PROVIDED FOR BY THE TRANSPORTATION ACT OF 1920, PLAINTIFF IN ERROR,

vs.

L. D. ALEXANDER AND FRANK GRIFFITH, DEFENDANTS IN ERROR.

BRIEF OF DEFENDANTS IN ERROR.

Statement of the Case.

This action was filed by L. D. Alexander and Frank Griffith against James C. Davis, Agent, United States Railroad Administration, in charge of the Chicago, Rock Island & Pacific Railroad and Chicago, Rock Island & Gulf Railroad, under the Transportation Act of 1920, in the District Court of Oklahoma County, State of Oklahoma, to recover damages for delay and rough handling to a shipment of live stock moving from Campana, New Mexico, to Oklahoma City, Oklahoma, in the sum of $1751.21; said shipment consisted of 227 head of

fat cattle and were loaded on the evening of January 6, 1920, and delivered to the terminal line at Oklahoma City at 8:15 a. m. on Jan. 12, 1920. Said cause was tried to a jury and a verdict rendered in favor of defendants in error, plaintiffs below, in the sum of $1655.99. An appeal was prosecuted to the Supreme Court of Oklahoma to reverse the judgment entered upon said verdict. The judgment of the trial court was affirmed (93 Okla. 159, 220 Pac 358).

This appeal is being prosecuted to reverse the judgment of the Supreme Court of Oklahoma, and in order that said cause may be reviewed and rightly determined in this Court.

The petition filed in the trial court will be found in the transcript of record between pages 2 and 6, inclusive, and the answer to said petition upon pages 9 and 10.

Evidence.

Grover B. Hill testified, in substance (R. 12-26) that he is in the live stock brokerage business, at Amarillo, Texas, and that in the months of December, 1919, and January, 1920, he sold to Frank Griffith, one of the plaintiffs, two bunches of cattle located southeast of Roy, New Mexico; that one bunch was delivered to Mr. Griffith at

Roy, New Mexico, January 3, and the other one delivered three days later, at Campana, New Mexico; that he was ready to deliver all of them on January 3 but they could not get enough cars. The second bunch was delivered at Campana on January 6. They were dry fat cows, in good condition; that there were two hundred twenty-seven delivered at Campana; that he made all arrangements for loading the cattle at Campana, which station is located on the El Paso & Southwestern, a part of the Rock Island system; that before loading the cattle at Campana he went to Tucumcari to see the joint agent for the Chicago, Rock Island & Pacific Railway Company and the El Paso & Southwestern, but the agent stated he would have to take it up with the authorities at El Reno, Oklahoma; that when the time came for the train to go up to Campana on the morning of January 6, the agent at Tucumcari told him to go on the train and he would send word up in a little while as to whether the cattle could be loaded that day. In a short time he sent a message up by a brakeman, written on a piece of telegraph blank, or yellow paper, stating it would be all right to go ahead and load the cattle, and the message was signed by Mr. Dever; that he thought nothing more of it and threw the message away; that they

loaded the cattle about 6:30 or 7:00 o'clock, and when the train got back to Tucumcari it was dark; that he went to the depot to see the agent and sign up the necessary papers and was informed that the train had been annulled and he could not get out until 7:30 the next morning; that he advised them not to unload the cattle because it would take half the night to unload and reload them, and he figured it would be harder on them than to leave them standing in the cars (R. 26); that he got out of Tucumcari next morning about 7:30 or 8:00 o'clock, and the train went about nineteen miles and stopped at Glen Rio; that they stayed at Glen Rio from 9:30 that morning, January 7, until 6:30 p. m., on January 9; that after getting out of Glen Rio at about 6:30 p. m. he arrived at Amarillo about 11:30 p. m., where the cattle were again unloaded; the distance from Glen Rio to Amarillo being about seventy miles; that the cattle remained in Amarillo twenty-four hours; that the usual and customary time for the transportation of cattle from Tucumcari, New Mexico, to Oklahoma City, Oklahoma, is less than thirty-six hours; that the usual and ordinary shrink on a shipment of cattle such as belonged to the plaintiffs on a thirty-six hour run is about forty or fifty pounds; that the excess shrink over and above the normal shrink upon this shipment he esti-

mated to be sixty pounds per head; that handling cattle in the way in which plaintiff's cattle were handled materially affects their appearance upon the market, at least twenty-five to thirty cents per hundred weight; that he saw the cattle at Amarillo the next morning and they were badly shrunk and drawn.

On cross-examination (R. 20), witness testified that the joint agent of the Chicago, Rock Island & Pacific Railway Company and the El Paso & Southwestern Railway Company, at Tucumcari, told him, "If I tell you to load those cattle, we will haul them out;" that said cattle lost about sixty pounds more than they ordinarily would have if handled in the usual and customary way (R. 23).

E. H. Johnson testified, in substance (R. 26-29), that he is in the commission business at the Oklahoma City stock yards; that he sold the shipment of cattle belonging to Frank Griffith in the yards at Oklahoma City, and the cattle were bruised and awful gaunt and never took hardly any fill; that their appearance would cause them to bring six bits to a dollar a hundred less than they would have; that they were sold to the packers; that being handled in the manner in which they were he figures that they lost in excess shrink anywhere from sixty to seventy-five pounds per head over and above the normal shrink.

FRANK GRIFFITH, plaintiff, testified, in substance (R. 29-51), that he has been buying and selling cattle for about twenty-five years and shipping to the Oklahoma City market; that in December, 1919, and January, 1920, he bought a herd of cattle near Roy and Middlewater, New Mexico; that the purchase was made through Grover B. Hill; that before purchasing said herd of cattle he took the matter up with Mr. Peterson, the live stock agent for the Rock Island, at Amarillo, Texas, who advised that he would secure the necessary cars for him; that after being assured that the cars would be furnished, he purchased the cattle; that in his arrangements with Mr. Peterson, he stated that he would have to take it up with El Reno, Oklahoma, before he could make and definite promise and after that he told Mr. Peterson when he would want the cars, and he replied that he would have them there; that he agreed to have enough cars so that both bunches of cattle could be loaded, one at Roy, New Mexico, and the other at Middlewater, New Mexico, on January 3, and consolidated at Tucumcari; that only enough cars were furnished to take care of the cattle at Roy, New Mexico, on January 3; that the other shipment reached Oklahoma City on January 12; that they were in bad condition, being badly shrunk, drawn and bruised, the cat-

tle being jammed and covered with bruises, and kept on the road for a long time, and being jaded and fagged hurts them from a packer's standpoint anywhere from twenty-five cents to two or three dollars per hundred weight.

That said shipment of cattle being on the road for the length of time it was would shrink from sixty to seventy-five pounds per head over and above the normal shrink; that he was required to pay $79.40 at Glen Rio, New Mexico, for feed, aside from $24.00 worth of feed given the cattle in the yards.

That he has been to Tucumcari, New Mexico, a good many times; that the train crews run from Tucumcari into Amarillo, Texas, without any change; that between Amarillo, Texas, and Oklahoma City the train crews change at Sayre, Oklahoma, and El Reno, too, he thinks; that there is no change made at the state line between New Mexico and Texas; nor any change made at the state line between Texas and Oklahoma; that the line of railroad between Tucumcari and the Texas line is known as the Chicago, Rock Island & Pacific Railway Company's line; that is the name it goes under; that Glen Rio is on the line between New Mexico and Texas; that the line of railroad between Glen Rio through the Texas Panhandle is known as the Chicago, Rock Island

& Gulf Railway Company's line, and from the Texas-Oklahoma boundary line east it is known as the Chicago, Rock Island & Pacific Railway Company's line; that in all his dealings with Mr. Peterson, the live stock agent at Amarillo, Texas, he always stated that he would have to take it up with the dispatcher at El Reno before he could give him an answer.

The following is the entire direct examination of W. E. Grimes, a witness on behalf of plaintiff (R. 51):

"By Mr. Suits (Attorney for plaintiffs):

Q. State your name?

A. William E. Grimes.

Q. What position, Mr. Grimes, do you occupy with the State of Oklahoma?

A. Auditor Corporation Commission.

Q. As auditor of the Corporation Commission, do you have in your department and under your jurisdiction the reports filed by the Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir.

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Defendant excepts.

Q. Is each railroad company doing business in the State of Oklahoma required to file annual report with the Corporation Commission?

A. Yes, sir.

Q. Showing mileage operated and various lines controlled by it?

A. Yes, sir.

Q. The ownership of its subsidiary lines?

A. Yes, sir.

Q. Do you have the report of the Chicago, Rock Island & Pacific Railway Company for the year 1919 (R. 51)?

A. Yes, sir; for the year ending December 31, 1919.

Q. What does that report show, Mr. Grimes, with respect to the ownership of the Chicago, Rock Island & Gulf Railway Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

A. It shows, on page 214, item 7, column J, that the control represents 100 per cent.

Q. What is that report, 100 per cent of what?

A. I understand it to mean 100 per cent of the—

Mr. Bleakmore: Object to what he understands it to be.

The Court: If he knows, he can state.

A. (Continued): That is line 7, page 214, Schedule 218, of the Rock Island Lines, Annual Report of the Chicago, Rock Island & Pacific Railway Company, filed with the Corporation

Commission of the State of Oklahoma, for the period ending December 31, 1919.

Mr. Bleakmore: Move to exclude the answer, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Check that over and read it, so we will have it in the record (R. 52).

A. Well, under the heading 'Line Number' is '7;' 'Line Reference Number: E;' Class Number ——; 'Name of Issuing Company and Description of Security Held'—that is the heading—'C. R. I. & G. R'y. Company—The;' 'Pledged'—under the sub-head 'Par value of amount held at close of year' '468,200.00;' 'Book value at close of year—$468,200.00;' 'Unpledged,' under sub-head 'Par value of amount held at close of year' $800.00; 'Book value at close of year'—800.00; 'Extent of Control—100 per cent.

Mr. Bleakmore: Defendant moves to exclude the answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. You describe this as being Schedule 218? Will you please state what the title of that schedule is?

A. 'Investments in securities of carrier companies affiliated with respondent.'

Q. What you have just read to the stenographer

comes from the Annual Report of The Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir.

Mr. Bleakmore: Object, and move to exclude the answer.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Do you have the annual report of that same company for the year 1920?

A. Yes, sir (R. 53).

Q. I wish you would turn to that report.

A. I also have what is designated here as the '40th Annual Report of The Chicago, Rock Island & Pacific Railway Company and Proprietory Companies for The Fiscal Year Ending December 31, 1919.'

Mr. Bleakmore: Move to exclude the last answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Mr. Grimes, what does that report show with respect to the control of The Chicago, Rock Island & Gulf Railway?

Mr. Bleakmore: Objected to as incompetent, irrelevent and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

A. It shows the railroads operated by the C. R. I. & P. Railroad Company, under the name of 'Rock Island Lines.'

Q. On what page?

A. Page 60; but this here refers to the title page —to the first page—for emphasis.

Q. I wish you would read the title page of this 40th Annual Report of The Chicago, Rock Island & Pacific Railway Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception (R. 53).

A. '40th Annual Report of The Chicago, Rock Island & Pacific Railway Company and Proprietory Companies, Fiscal Year Ending December 3, 1919. This Report Embraces the Affairs of the Corporation and Results from Operation by The United States Railroad Administration for the Entire Year. Presented in a Consolidated Form with the view of continuing the historical and statistical records of the Company, thus affording comparison with the data in preceding annual reports.' Now, on page 60, under the head of 'Mileage Operated December 31, 1919,' under the heading of 'The Chicago, Rock Island & Gulf Railway'—'Main Line, Texola, Oklahoma (Texas-State-Line) to Texas-New Mexico State Line near Glen Reo, Texas. Miles first main track, 182.90. Miles of yard tracks and siding—22.98.' That is under the heading 'Rock Island Lines.' Mileage operated December 31, 1919,' and shows that that portion of the Texas lines was operated by the Rock Island Lines at that time.

Mr. Bleakmore: Comes now the defendant and

moves to exclude the last answer of the witness, as incompetent, irrelevant and immaterial, and calling for the conclusion of the witness.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Do you have the report filed by The Chicago, Rock Island & Pacific Railway Company with the Corporation Commission of Oklahoma for the year ending December 31, 1920?

A. Yes, sir (R. 54).

Q. What does that report show with respect to the ownership of The Chicago, Rock Island & Gulf Company?

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note an exception.

A. Why, identically the same—'Declaration of Interests,' same page and under the same schedule number as that shown in the report for 1919.

Q. All the way through?

A. All the way through, yes, sir.

Q. I think, in order to be on the safe side, we had better ask you to introduce or offer in evidence 'Schedule 218. Investment in Securities of Carrier Companies Affiliated with Respondent.'

Mr. Bleakmore: Objected to as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. Line 7?

A. You want to read this into the record?

Q. Yes.

A. Heading is '218'—that is the schedule number. 'Investment in Securities of Carrier Companies Affiliated with Respondent.' 'Line Number 6.'

Q. Is that 6 or 7?

A. It is 6 in this one. Under the head of 'Name of Issuing Company and Description of Security Held' is 'C., R. I. & G. Railway Company—The.' Under the head of 'Par Value of Amount Held at Close of Year '468,200.00.' 'Book Value at Close of Year—$468,200.00' (R. 55).

Q. That is under 'Unpledged,' is it not?

A. Yes; 'Unpledged' and sub-head 'Amount Held, etc'—$800.00.' Under the sub-head 'Book Value Close of the Year— $800.00.' Extent of Control—100 per cent.'

Q. Is that all in that report, Mr. Grimes?

A. Yes, sir; that's all there is on that line.

Mr. Bleakmore: Move to exclude the last answer of the witness, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

Q. Is there anything else in that report, Mr. Grimes?

A. Why, I think nothing else.

Mr. Suits: We now offer in evidence the line read

by the witness from the Report of 1920—Annual Report.

Mr. Bleakmore: Object to it, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Mr. Suits: And also the line read from the 1919 Report of the Corporation Commission.

Mr. Bleakmore: Objected to, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: *Exception.*

(A true copy of the matter above offered is as read into the record by the witness) (R. 55).

Q. (Handing paper to witness): Please state what that is, Mr. Grimes?

A. Report of The Chicago, Rock Island & Pacific Railway Company and Subsidiary Lines, Fiscal Year Ending December 31, 1920.

Q. Does that show the leased lines and the lines operated by the Chicago, Rock Island & Pacific Railway Company?

A. Yes, sir. Its own declaration on the title sheet is 'This report embraces the affairs of the corporation and the results from operation of the lines during January and February, 1920, by the United States Railroad Administration and for the balance of the year by the corporation, presented in a consolidated form with the view of continuing the historical and statistical records of the Company, thus affording comparison with the data in preceeding annual reports.'

Mr. Bleakmore: Move to exclude all this, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Q. What does that report show with respect to the operation of the line of railway known as Chicago, Rock Island & Gulf Railway?

Mr. Bleakmore: Object to that, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Note our exception.

A. It shows, page 61, under the head 'Rock Island Lines.' 'Mileage operated December 31, 1920,' under the sub-head 'Chicago, Rock Island & Gulf Railway' 'Texola, Oklahoma (Texas State Line) to Texas New Mexico state line near Glen Rio, Texas, Mileage (R. 56): First main track, 182.90. Miles of other tracks and sidings, 23.10.'

Mr. Suits: We offer in evidence the statement read by the witness to the court reporter as to the operation of the Chicago, Rock Island & Gulf Railway Company lines, and also the title page of this 41st Annual Report.

Mr. Bleakmore: Object to it, as incompetent, irrelevant and immaterial.

The Court: Overruled.

Mr. Bleakmore: Exception.

Mr. Suits: That's all. Take the witness'' (R. 56).

This witness on cross-examination testified (R. 56-57) as follows:

"Q. Do you know whether or not the Chicago, Rock Island & Pacific Railway Company in the years 1919 and 1920 owned the majority of the stock of the Chicago, Rock Island & Gulf Railway Company?

A. Personally, I know that it did, but I don't know that—

Q. You know that it did?

A. Yes, sir.

Q. How do you know it did?

A. Why, by familiarity with them—I have been in the railroad business in Texas about 20 years, and my relations were such that I knew it from my dealings and transactions, they advised me that much.

Q. With the Gulf Railway Company?

A. Yes, sir.

Q. How many shares of stock were issued by that company?

A. I don't know. I just know that the C., R. I. & P. only stands for a legal excuse for the existence of the Gulf so as to comply with the Texas laws as far as it can by maintaining a separate entity down in Texas.

Q. You do know, as a matter of fact, that it is a separate corporation in the State of Texas, do you not?

A. Yes, sir.

Q. And you know, as a matter of fact, that under

the laws of the State of Texas the C., R. I. & P. cannot operate a road in the State of Texas, don't you?

A. Well, it does do it through its agents down there in Texas.

Q. It does it through its agents?

A. Yes, sir.

Q. In other words, you know, as a matter of fact, the the Chicago, Rock Island & Pacific Railway Company is constantly violating the constitutional provision of the State of Texas in operating its road there, do you?

A. Yes, sir.

Q. You do?

A. Yes, sir.

Q. How do you know it? Tell the court.

A. Well, I know when I was claim adjuster down there for the M., K. & T. and that with the Rock Island we made an agreement with the adjuster of the C., R. I. & P. with reference to settling grain claims on shipments of grain originating in Chicago and concealed list issued to me and that was supposed to be binding, but his superior in Chicago repudiated it, and he admitted he had instructions from Chicago and they fired that man over it.

Q. You were claim adjuster down in Texas?

A. Yes, sir.

Q. And you got all this information as a claim adjuster on some other railroad?

A. Yes, sir."

H. L. Reed (R. 63-65), general superintendent of the Chicago, Rock Island & Pacific Railway Company, residing at El Reno, Oklahoma, testified, in substance (R. 63-65) on cross-examination, that his jurisdiction covers all the Rock Island lines in New Mexico, Tennessee, Louisiana, Arkansas, Oklahoma and a part of the lines in Missouri and Kansas; that a train starting from Tucumcari, New Mexico, for Oklahoma City, comes over the main line of the Rock Island in the Panhandle of Texas; that no change is made at either of the state lones, New Mexico or Oklahoma boundary lines; that the reports which he referred to in his direct examination are not made under his supervision or within his jurisdiction; that all of the trains in Texas are handled from Amarillo, including some in Oklahoma, as far as Sayre, and the dispatcher at Amarillo handles trains to Tucumcari, New Mexico; that trains run through from Oklahoma City to Amarillo and Tucumcari, and tickets are sold through to those stations; that the Chicago, Rock Island & Gulf is a part of the Rock Island system.

Witness identified Exhibit K (R. 58-9), being an official time table gotten out by the Rock Island system, and stated that it was issued by the Rock Island.

Witness identified Time Table No. 50, showing a list of stations between Memphis, Tennessee, and Tucumcari, New Mexico.

Witness also identified Official Guide of Railroads of the United States, and stated that it was recognized by all railroads as being correct, the information being furnished by the railroads (R. 63).

Page 803 of said Official Guide was exhibited to the witness, which contained a list of the Rock Island lines and the names of the officers. From the Official Guide the witness stated that Mr. J. E. Gorman was president of the Chicago, Rock Island & Pacific Railway Company and also president of the Chicago, Rock Island & Gulf Railway Company. Mr. Warner was manager of the second district of the Chicago, Rock Island & Pacific Railway Company, with headquarters at El Reno, Oklahoma. The second district of the Chicago, Rock Island & Pacific Railway Company comprises all the lines in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico and part of the lines in Kansas and Missouri; that Mr. Warner is also vice-president of the Chicago, Rock Island & Gulf Railway Company, with headquarters at El Reno for that company; that among the lines in Texas, which are a portion of Mr. Warner's jurisdiction in the second district, are the Chicago, Rock Island & Gulf lines.

BRIEF AND ARGUMENT.

The opinion of the Supreme Court of Oklahoma (93 Okla. 159, 220 Pac. 358), affirming the judgment in this case, will be found in the transcript of record commencing at page 103 and ending on page 108. This opinion has since been overruled by the Supreme Court of Oklahoma in *Davis, Federal Agent of Railroads* v. *Benson,* 105 Okla. 41, 231 Pac. 536. At the time the opinion was written by one of the divisions of the Supreme Court Commissioners the questions raised in the briefs of both plaintiff and defendant were completely ignored, and the judgment of the trial court affirmed upon reasons which were clearly erroneous and which were not discussed in the brief of either party to the case.

The principle under which we contend that the judgment of the trial court should be affirmed is as follows:

"Where one railroad company actually controls others through the ownership of their stock and operates all of the lines as a single system, although the general management of each road is retained by the company owning it, the dominant company will be liable for injuries due to the negligence of one of the subordinate companies."

This principle is supported by the following authorities:

33 Cyc. 697.

St. Louis-S. F. R. Co. v. *Sanford,* 54 Okla. 185, 153 Pac. 650.

Wichita Falls & N. W. Ry. Co. v. *Puckett,* 53 Okla. 463, 157 Pac. 112.

Lehigh Valley Ry. Co. v. *Dupont,* 128 Fed. 840, 64 C. C. A. 478.

Lehigh Valley Ry. Co. v. *Delachesa,* 145 Fed. 617, 76 C. C. A. 307.

Davis, Director General v. *Griffith,* 106 Okla. 1, 230 Pac. 262.

In *St. Louis-S. F. R. Co.* v. *Sanford, supra,* it was held:

> "One railroad company does not become liable for the negligence of another merely by reason of being a stockholder in the corporation guilty of the negligent act, *but where one company actually controls another, and operates its line of road as a single system, and sells tickets at the stations of the subordinate line over its system, the dominant company will be liable for injuries suffered by a passenger due to the negligence of the subordinate, although the subordinate company keeps up its corporate organization.*"

Also, the same proposition was considered and passed upon in the case of *Wichita Falls & N. W. Ry. Co.* v. *Puckett,* in which it was held:

> "Where two railway companies are incorporated under the laws of different states, but their tracks connect at the state line, and together form a continuous line of railway extending into both states, and said companies use the same headquarters,

roundhouses, and switch yards, and have the same managing and operating officers, and employ and use the same engineers and train crews, and use indiscriminately each other's engines, cars, and trains and jointly operate through trains and train crews over both lines of road, and sell continuous tickets and carry passengers over both roads, and deposit the earnings of both companies in one common fund received, kept and disbursed by a common auditor of both companies, and from which common fund the employees and expenses of both companies are paid, and the joint earnings and expenses are respectively credited and charged to each company in proportion to mileage owned by it of the aggregate contiguous lines of railway in the two states, and the same common managing officer of both companies, and all of whom may be required to work on either company's line of railroad, held in such case, an engineer so employed and controlled who is injured by the negligence of one or both of such railway companies, while doing the work of both, may sue one or both companies in the courts of either state, and recover his damages, provided he is otherwise entitled to damages."

In the first case cited above, the plaintiff Sanford was injured at Vernon, Texas, at the station of the St. Louis, San Francisco & Texas Railway Company, a Texas corporation. She instituted suit in the District Court of Oklahoma County against St. Louis & San Francisco Railway Company, a Missouri corporation. The defendant in that case introduced evidence to the effect that Vernon, Texas, where the injury occured, was on the line of the St. Louis, San Francisco & Texas

Railway Company, a separate and distinct corporation from the one sued. The charter of that corporation was introduced in evidence, showing it to be a Texas corporation, and empowered to build and operate a railroad within the State of Texas. There was evidence that the Texas corporation had a secretary and treasurer who were not employes of the Missouri corporation and had no connection with it. There was also evidence that the same crews operated trains from Hobart, Oklahoma, over the line of the Missouri corporation in Oklahoma to the Red River, the boundary line between Oklahoma and Texas, and thence over the road of the Texas company into Vernon, Texas, and that they were paid in proportion to the mileage by the Texas corporation and the Missouri corporation. The plaintiff, Sanford, introduced the annual report of the Missouri corporation filed with the Corporation Commission of Oklahoma, which showed for the fiscal year beginning July 1, 1911, and ending June 30, 1912, that the Missouri corporation had the control of the Texas corporation and owned its entire stock, and that its bonds were deposited by the Missouri corporation to secure a loan of its own. The plaintiff also introduced an official publication, called a folder, which showed W. B. Biddle to be vice-president of the Missouri corporation and also vice-president of the Texas corporation. This folder

also contained a time table from Enid, Oklahoma, to Vernon, Texas, with the direction to ticket agents that but one coupon was required on tickets from junction points to all the points on the line of the Texas corporation; that said folder also contained a map headed "Frisco Lines," which indicated the line from Enid, Oklahoma, to Vernon, Texas. The court said:

> "This raises the question as to the liability of the railroad company which is operating the road of another corporation to one who assumes the relationship of a passenger to it. In our opinion the evidence was sufficient to go to to the jury on the question whether the plaintiff in error was operating this road."

The court then cites with approval the following cases:

> *Lehigh Valley Railway Co.* v. *Dupont,* 128 Fed. 840, 64 C. C. A. 478.
> *Lehigh Valley R. Co.* v. *Delachesa,* 145 Fed. 617, 76 C. C. A. 307.

Also:

> 33 Cyc. 697.

In *Lehigh Valley Railway Co.* v. *Dupont, supra,* it was held:

> "Where the lines of several railroad corporations are conducted as a single system, for the purpose of the traffic between different points, originating on either, and such corporations

divided the proceeds of such business on a mileage basis, the several corporations as to such business were partners, and liable to third persons on the principles of the law of agency.

"Where defendant sold deceased a ticket for transportation between two points, containing nothing to show that such transportation, or a part thereof, was to be performed on the E. Railroad, operated by another corporation, whose stock was entirely owned by the L. T. Railroad Company, the stock of which in turn was owned by defendant company, which in fact controlled the operation of the E. Railroad Company through the defendant's officers, defendant was liable for the wrongful killing of such passenger, though resulting from the negligence of the E. Railroad Company."

In the body of the opinion it is said:

"But the law does not prevent one railroad corporation from making a contract with a passenger to carry him beyond its own road and upon or over the connecting roads of another railroad corporation and assume towards him all the ordinary obligations of a passenger carrier during the transit. The contract, being incidental to one to carry him over its own road, it not *ultra vires.* Nor is it *ultra vires* for a railroad corporation to agree with other railroad corporations upon such terms of co-operation in transacting their joint business as may be satisfactory. *And where the lines of several railroad corporations are conducted as a single system for the purpose of the traffic between different points originating upon either, the corporations may constitute themselves a partnership for the business of such traffic; and when they do, although the general management of each road is*

retained by the corporation owning it, the several corporations are, as to such business, partners, and liable upon the principles of the law of agency. When a relation of joint and several agency exists in a system of dominant and subordinate carriers, the dominant carrier is liable for all breaches of obligation by any of the other constituent carriers in the performance of a contract made by it for the transportation of passengers or freight. These propositions are established by the following authorities:

"*Swift* v. *Pacific Mail Steamship Co.*, 106 N. Y. 206, 12 N. E. 583; *Philadelphia, etc. R. Co.* v. *State*, 58 Md. 372; *Wyman* v. *Chicago, etc. R. Co.*, 4 Mo. App. 578; *Bradford* v. *So. Car. R. Co.*, 7 Rich. Law 201, 62 Am. Dec. 411; *Harris* v. *Cheshire R. Co.* (R. I.), 16 Atl. 512; *Block* v. *Fitchburg R. Co.*, 139 Mass. 308, 1 N. E. 348; *Independence Mills Co.* v. *Burlington, etc. R. Co.*, 72 Iowa 535, 34 N. W. 320, 2 Am. St. Rep. 258; *Cincinnati R. Co.* v. *Spratt*, 2 Duv. (Ky.) 4; *Barter* v. *Wheeler*, 49 N. H. 9, 6 Am. Rep. 434. We find nothing inconsistent with these propositions decided in *Pennsylvania R. Co.* v. *Jones*, 155 U. S. 333, 15 Sup. Ct. 136, 39 L. ed. 176. Especially should the dominant corporation be regarded as the principal and the constituent corporations as agents when, as in this case, the dominant corporation ultimately derives all the profits and incurs all the losses arising from the traffic originating on any of the lines. We conclude that the relations of the defendant with the Easton & Amboy Railroad Company in respect to the traffic originating on the lines of either were those of a principal and its agent. The ticket which it sold to the decedent evidenced a contract for through carriage between Easton and Alpha in either direc-

tion, and on its face did not purport to be the contract of the Easton & Amboy Railroad Company, or refer to that corporation in any way. In view of the relations between the two carriers, it should be regarded as a contract for through transportation, which, so far as it was to be performed on the Easton & Amboy Railroad, was to be performed by an agent of the defendant. Upon the undisputed evidence the trial judge would have been justified in instructing the jury to find a verdict for the plaintiff if they found in her favor upon the issues of negligence and concurring negligence. Consequently the defendant was not prejudiced by his rulings in receiving evidence offered for the purpose of showing that the defendant had held itself out to the public as operating the Easton & Amboy Railroad, or in submitting the case to the jury upon the theory that the plaintiff was not entitled to a verdict unless they should find that the defendant had so held itself out to the public. The complaint set out the facts constituting the cause of action, and was framed upon the legal theory that the defendant was responsible for its own negligence and for that of the Easton & Amboy Railroad Company, and the amendment permitted by the trial judge was unnecessary and did not prejudice the defendant."

In *Lehigh Valley R. Co.* v. *Delachesa, supra,* it was held:

"Where one railroad company controls others through the ownership of their stock and operates the lines of all as a single system, though the general management of each road is retained by the corporation owning it, the relation between the dominant and subordinate companies with respect

to traffic originating on the lines of the former is that of principal and agent, and the dominant company is directly liable for an injury to one employed in unloading one of its own cars on the tracks of a subordinate company through the negligence of employes of the latter."

In 33 Cyc. 697, it is said:

"One railroad company does not become liable for the acts of the servants of another merely by reason of being a stockholder in that company, or a guarantor of its bonds, as such facts do not of themselves constitute either a partnership or make one company the servant or agent of the other; *but where one company actually controls others through the ownership of their stock and operates all of the lines as a single system, although the general management of each road is retained by the company owning it, the dominant company will be liable for injuries due to the negligence of one of the subordinate companies.*"

In the case at bar, it will be noted from plaintiff's Exhibit K that the Rock Island Lines issue a folder containing time tables, and Table No. 50 contains a list of the stations from Memphis, Tennessee, to Tucumcari, New Mexico. On the cover page of the folder we find this significant advertisement:

"The Rock Island is unique in that with its own rails it serves the broad and rich territory bordered by Lake Michigan and the Mississippi River on the east, the Dominion of Canada on the north, the Rocky Mountains on the west and the Gulf of Mexico

and the Republic of Mexico on the south. It also reaches advantageously, over the rails of its connections, the great empire west of the Rocky Mountains to the Pacific Ocean."

We also find from the testimony of Mr. H. L. Reed, general superintendent of the Chicago, Rock Island & Pacific Railway Company, whose residence is at El Reno, Oklahoma, that the Official Guide of Railroads of the United States is recognized by all railroads as being correct, the information found therein being furnished by the railroads; that on page 803 of said Official Guide Mr. J. E. Gorman is named as president of the Chicago, Rock Island & Pacific Railway Company, and also president of the Chicago, Rock Island & Gulf Company; that Mr. Warner is manager of the second district of the Chicago, Rock Island & Pacific Railway Company, with headquarters at El Reno; that the second district of the Chicago, Rock Island & Pacific Railway Company comprises all of the lines of railroad in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico, and part of the lines in Kansas and Missouri; that Mr. Warner is also vice-president of the Chicago, Rock Island & Gulf Railway Company and has his headquarters in El Reno, Oklahoma, as vice-president of that company; that among the lines in Texas which form a portion of the jurisdiction of the second district under Mr. Warner are the Chicago, Rock Island & Gulf lines.

Mr. Reed further states that passenger trains run right through without any stop or change at the state lines and tickets are sold from Oklahoma City to Amarillo and Tucumcari. Mr. Reed further stated that the Chicago, Rock Island & Gulf lines are a part of the Rock Island system and are so carried in the advertisements.

The annual reports of the Chicago, Rock Island & Pacific Railway Company filed with the State Corporation Commission for the years 1919 and 1920 were introduced in evidence, and under the sworn statements of that company it appears that that company owns all of the stock of the Chicago, Rock Island & Gulf Railway Company; that the per cent of control of the company is 100. The reports of that company for both the years 1919 and 1920 show under a sub-head, "Chicago, Rock Island & Gulf Railway Company," "Extent of Control" that it is 100%.

It was contended by the plaintiff in error in the state court that inasmuch as the operation of these lines of railroad were in the hands of an agent for the United States Railroad Administration, then that the ownership of the stock or control of one corporation by the other could, in no sense, be germane to the situation.

Great stress is placed upon the decision of this

court in *Missouri Pacific R. Co.* v. *Ault*, 256 U. S. 554, 65 L. ed. 1087, but an examination of that case must convince the court that it is not in point and has no bearing whatever upon the issues involved in this appeal.

The State of Arkansas had a statute which was penal in its nature and a suit was instituted in the courts of Arkansas to enforce the penal provisions of that statute. The statute was directed at railway companies and it was the contention of the party instituting the suit under the statute that the penalty provisions applied to the director general in charge of the operation of railroads as well as to a carrier, but this court holds that the director general is not made liable for statutory penalties for a violation of state laws. *In the present case the agent of the Railroad Administration is not being sued for a penalty but for his neglect as a common carrier in failing to discharge his duties as such.*

In the case of *Wichita Falls & Northwestern Railway Co.* v. *Puckett, supra,* the plaintiff, Puckett, was the locomotive engineer in charge of one of the railway company's engines, and was injured in the roundhouse at Wichita Falls, Texas, while attempting to start his engine. Suit was brought in Oklahoma against the Wichita Falls & N. W. Railway Company, an Oklahoma corporation, and the railway company defended upon the

ground that the plaintiff's injuries were received while in the employ of the Wichita Falls & N. W. Railway Company, of Texas. Plaintiff, Puckett, replied, alleging that the Wichita Falls & N. W. Railway Company of Texas and the Wichita Falls & N. W. Railway Company (the Oklahoma corporation) were one and the same company. The court in its opinion says:

> "The record discloses the following facts: The Wichita Falls & Northwestern Railway Company of Texas and the Wichita Falls & Northwestern Railway Company, the defendant, were each promoted by J. A. Kemp and Frank Kell, of Wichita Falls, Texas. The Texas company was incorporated September 26, 1906, under the laws of Texas, and the defendant company was incorporated under the laws of Oklahoma, October 5, 1906. Kemp & Kell originally owned most, if not all, of the stock of both companies. Both companies were organized with J. A. Kemp as president; Frank Kell, vice-president and general manager, and Wylie Blair as secretary; W. S. Hays, treasurer; Thomas R. Orth, superintendent, and C. C. Huff, general attorney for each of said companies.
>
> "The Oklahoma corporation, the defendant herein, was promoted, incorporated, and organized for the purpose of co-operation with the Texas corporation in the construction of a continuous line of railway from Wichita Falls, Texas, to points in Oklahoma.
>
> "The Wichita Falls & Northwestern Railway Company of Texas constructed its track from the city of Wichita Falls, Wichita County, Texas, north to the boundary line between Texas and Oklahoma, from

which point the Wichita Falls & Northwestern Railway was constructed north into Oklahoma, the rails of the two companies connecting at a point near the middle of the bridge over Red River, designated as the boundary line between the two states, and together these railroads constituted one continuous line from Wichita Falls to cities and towns in Oklahoma.

"The two lines of railways mentioned were included, with others, in a system of railroads controlled by J. A. Kemp and Frank Kell, in which they owned most, if not all, the stock. This system was known as 'The Wichita Falls Route,' which name was labeled on the cars of both companies, and such cars used and operated over the lines of both companies. The Wichita Falls Route system continued and existed at the time of the plaintiff's injury in December, 1909, and, so far as the evidence in this case discloses, is still in existence, with the personnel of its principal and managing officers practically the same, except that R. J. Sullivan is the present superintendent."

After quoting from the testimony of several witnesses, including the plaintiff, Puckett, the court says:

"In short it appears from the evidence: That the Wichita Falls & Northwestern Railway Company of Texas and Wichita Falls & Northwestern Railway Company were incorporated with the same general officers, with a view of co-operation of the Oklahoma company with the Texas company in the construction and operation of a continuous line of railway from Wichita Falls, Texas, to points in Oklahoma, and that, at the time of plaintiff's injury, said companies had one set of officers from president down. That

these companies and other railway companies, controlled by J. A. Kemp and Frank Kell, were known and operated as the 'Wichita Falls Route,' which name was labeled on the cars of both companies. That the earnings of both companies went into one common fund and were deposited in the same depository in Wichita Falls, the headquarters of 'The Wichita Falls Route.' Each employee of the route system was employed by the same person and received his salary in one check drawn by the same person on the common fund of the two companies. Each train crew, including engineers, was under the management and control of the same person at Wichita Falls, and engineers, trains, and train crews were sent indiscriminately from Wichita Falls over both lines of road, without change or interruption, into Oklahoma. That since the construction of the Oklahoma line of railway, no train was ever sent to run out of Wichita Falls over the Texas road which did not go over into Oklahoma, unless something was wrong with the railroad bridge over Red River, the boundary line between said states. That the continuous line of railroad operated by these two companies consists of about 17 miles in Texas and a much greater distance in Oklahoma, and the operating expenses, including the salaries of engineers and train crews, were borne by the two companies in proportion to the number of miles of railway situated respectively in Texas and Oklahoma.

"Thus the Oklahoma line contributed the greater portion of such expenses. The tickets for passenger fares were card tickets and were sold indiscriminately from points on the Texas line to points on the Oklahoma line, and vice versa, and the proceeds thereof likewise turned into the common fund refer-

red to. Plaintiff, Puckett, was employed by Davis, the master mechanic, for the Wichita Falls Route system, and did not know until after his injury that said system included more that one railroad or corporation; and it appears that during his employment he received orders from Davis, the master mechanic, both in Wichita Falls and at the end of plaintiff's run at Frederick, Okla. Plaintiff's usual run extended from Wichita Falls, Tex., to Frederick, Okla., and at the time he was hurt he was ordered by the master mechanic to take a defective engine out of the roundhouse at Wichita Falls, which engine was used for the purposes of the Wichita Falls Route system. The evidence fails to show whether the engine on which plaintiff was hurt was ordered out and was being taken out of the roundhouse by plaintiff for the purpose of switching the Oklahoma company's cars in the switchyards, or for the purpose of being sent from Wichita Falls into Oklahoma, or for what purpose it was ordered out. Plaintiff's application for employment was upon a blank headed 'Wichita Falls Route,' and was addressed to W. M. Davis, master mechanic, and throughout the application 'the company' was referred to as the party with whom employment was sought. When plaintiff was discharged after his injury, he was discharged by the superintendent of Wichita Falls Route system.

"In other words, plaintiff made application to defendant's master mechanic for employment on the Wichita Falls Route system, which included the defendant company, and he was employed and worked continuously to the date of his injury for said route, much of the time on defendant's road, and in the roundhouse and switchyards in which defendant's engines were kept and its switching done and of which defendant's master mechanic was foreman.

Plaintiff's salary was paid out of the common fund, most of which was contributed by defendant, and which was kept by defendant's treasurer at defendant's headquarters; plaintiff's salary check was drawn by defendant's auditor and bookkeeper, and during his employment plaintiff was under the direction, control and supervision of defendant's master mechanic and superintendent, at times receiving his orders at both Wichita Falls, Tex., and Frederick, Okla., from these officers, and when he was injured he was discharged by defendant's superintendent. It also appears from the testimony of Mr. Huff, general attorney of the Wichita Falls Route and all railway companies constituting said system, that J. A. Kemp and Frank Kell, the president, vice-president and general manager, and stock owners of the Wichita Falls & Northwestern Railway Company of Texas, were the promoters of defendant railway company, which was incorporated with Kemp and Kell as president, vice-president and general manager, respectively, and other subordinate officers, the same as in the Texas corporation, and that the defendant company was incorporated for the purpose of co-operation between it and the Texas company in the construction and operation of a continuous line of railroad from Wichita Falls, Texas, to points in Oklahoma, 'whereby it could divert tonnage and receive tonnage.' These two companies have continuously co-operated in the joint operation of these two lines of railway since the organization of the defendant company."

We want, at this point, to particularly call the Court's attention to the testimony given by Mr. H. L. Reed, general superintendent of the plaintiff in error, that a train starting from Tucumcari, New Mexico, for

Oklahoma City, Oklahoma, comes over the main line of the Rock Island through the Panhandle of Texas; that no change is made at either the state line between New Mexico and Texas or the state line between Texas and Oklahoma; that all of the trains in Texas are handled by the dispatcher from Amarillo, including some of the trains in Oklahoma, as far as Sayre, and the dispatcher at El Reno handles trains to Tucumcari, New Mexico; that trains run through from Oklahoma City to Amarillo and to Tucumcari, and tickets are sold through to those places; that the Chicago, Rock Island & Gulf Railway is a part of the Rock Island System; that Time Table No. 50, identified by the witness, is gotten out by the Rock Island System; that J. E. Gorman is president of the Chicago, Rock Island & Pacific Railway Company, and also president of the Chicago, Rock Island & Gulf; that Mr. Warner, with headquarters at El Reno, Oklahoma, is manager of the second district of the Chicago, Rock Island & Pacific; that the second district includes all of the Rock Island lines in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico, and a part of Kansas and Missouri; that Mr. Warner is also vice-president of the Chicago, Rock Island & Gulf Railway, with headquarters at El Reno, Oklahoma; that the Chicago, Rock Island & Gulf lines in Texas are included in the second district, of which Mr. Warner is manager.

Frank Griffith, one of the defendants in error, also testified that he had made a good many trips to Oklahoma City from Tucumcari over the Rock Island; that the train crews run from Tucumcari into Amarillo, Texas, without change or interruption; that the same train crews operate the trains between Amarillo and Oklahoma City without interruption or change at the state line, but do change crews at Sayre, Oklahoma, and El Reno; that no change is made at the state line between New Mexico and Texas; that in dealing with Mr. Peterson, the live stock agent at Amarillo, Texas, he acted for the Chicago, Rock Island & Pacific Railway Company, and before doing so took the matter up with the dispatcher for that company at El Reno, Oklahoma.

All of the things testified to by the witness, referred to above, bring this case clearly within the principle announced in the Sanford and Puckett cases.

In the Ault case, which appears to be the leading case relied upon by the plaintiff in error, the court says:

> "The contention that the director general, being the carrier, is liable for the penalty imposed by the Arkansas statute, is rested specifically upon the clause in Sec. 10, to the effect that the carriers 'shall be subject to all laws and liabilities as common carriers, whether arising under state or Fed-

eral laws or at common law,' and the provision in Sec. 15, that the 'lawful police regulations of the several states' shall continue unimpaired. By these provisions the United States submitted itself to the various laws, state and Federal, which prescribed how the duty of a common carrier by railroad should be performed, and what should be the remedy for failure to perform. By these laws the validity and extent of claims against the United States, arising out of the operation of the railroad, were to be determined. But there is nothing either in the purpose or the letter of these clauses to indicate that Congress intended to authorize suit against the government for a penalty, if it should fail to perform the legal obligations imposed. *The government undertook, as carrier, to observe all existing laws; it undertook to compensate any person injured through a departure by its agents or servants from their duty under such law;* but it did not undertake to punish itself for any departure by the imposition upon itself of fines and penalties, or to permit any other sovereignty to punish it. Congress is not to be assumed to have adopted the method of fines paid out of public funds to insure obedience to the law on the part of the government's railway employees. The director general adopted a more effective and direct method: 'Now that the railroads are in the possession and control of the government, it would be futile to impose fines for violations for said laws and orders upon the government, therefore it will become the duty of the director general in the enforcement of said laws and orders to impose punishments for wilful and inexcusable violations thereof upon the person or persons responsible therefor.' General Order No. 8, *id.*, p. 167.

"The purpose for which the government permitted itself to be sued was compensation, not punishment."

Sections 10 and 15 of the Federal Control Act, referred to by this court in the Ault case, are as follows:

"Sec. 10. That carriers while under Federal control shall be subject to all laws and liabilities as common carriers, whether arising under State or Federal laws or at common law, except in so far as may be inconsistent with the provisions of this Act, or any other Act applicable to such Federal control or with any order of the president. Actions at law or suits in equity may be brought by and against such carriers and judgments rendered as now provided by law; and in any action at law or suit in equity against the carrier, no defense shall be made thereto upon the ground that the carrier is an instrumentality or agency of the Federal government," etc.

"Sec. 15. That nothing in this Act shall be construed to amend, repeal, impair, or effect the existing laws or powers of the states in relation to taxation or the lawful police regulations of the several states except wherein such laws, powers or regulations may effect the transportation of troops, war materials, government supplies, or the issue of stocks and bonds."

The question involved in the case at bar is one of compensation and for actual loss sustained through the negligence of the plaintiff in error. It is not a penalty, and, as said by this court, "the validity and extent of claims against the United States, arising out of the

operation of the railroads," are to be determined under the provisions of existing laws, whether State, Federal or common law. The court in its opinion in the Ault case says:

> "The government undertook, as carrier, to observe all existing laws; it undertook to compensate any person injured through a departure by its agents or servants from their duty under such law."

Here we have in a nutshell an expression from this court as to what is meant by Sections 10 and 15 of the Federal Control Act, and from the construction placed upon those provisions of that statute, the director general is subject to all the laws and liabilities that the carrier was subject to when not under the control of the government.

In the Sanford and Puckett cases, identical with the case at bar, the Supreme Court of Oklahoma has said that the dominant carrier was liable for the negligence of the subordinate carrier. The principle announced in the Sanford and Puckett cases is the same as the one announced in the cases of *Lehigh Valley Railway Co.* v. *Dupont* and *Lehigh Valley Railway Co.* v. *Delachesa, supra.*

In the case of The Willem Van Driel, Sr., 252 Fed.

35, by the Circuit Court of Appeals of the Fourth Circuit, the court says:

> "The inquiry remains whether the Pennsylvania railroad is liable as a participant in the operation of the elevators by reason of its control of the elevator company. This depends upon the question of fact whether the elevator company, although in name and organization a distinct corporation, was in substance a mere corporate agent or instrumentality of the Pennsylvania Railroad Company. *So. Pac. Terminal Co.* v. *Int. Comm. Com'n.*, 210 U. S. 523, 31 Sup. Ct. 279, 55 L. ed. 310; *Jos. R. Foard Co.* v. *State of Maryland*, 219 Fed. 827, 135 C. C. A. 497; *Lehigh Valley R. Co.* v. *Delachesa*, 145 Fed. 617, 76 C. C. A. 307.
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> "It is true that the elevator company and its stockholders and directors held meetings, but in all essential particulars their action was dictated and controlled by the railroad company. The whole course of dealing showed that the surplus of $200,000 it had in the bank at the time of the fire was absolutely under the control of the railroad company. The superintendent of the elevator company who directed its mechanical operation and its subordinate employes, had no duty to perform with the railroad company, but were evidently under its ultimate control. It would be impossible to imagine a relationship between corporations where the subsidiary corporation was more completely under the control of the dominant corporation. The elevators were constructed and operated merely as a facility to the business of the railroad company. Applying the language of Judge Wallace in *Lehigh Valley Railroad Co.* v. *DuPont*, 128 Fed.

840, 64 C. C. A. 478, the potential and ultimate control of all its property and business affairs of the elevator company was lodged in the railroad company, and this control was exercised as completely and as directly as the machinery of corporate organisms would permit. Such complete dominance and control by the railroad company made the elevator company its mere puppet. *United States* v. *Del., Lack. & West. R. R.*, 238 U. S. 516, 35 Sup. Ct. 873, 59 L. ed. 1438."

Again, in the case of *Luckenbach S. S. Co. Inc. et al.* v. *W. R. Grace & Co.*, Circuit Court of Appeals, Fourth Circuit, 267 Fed. 676, it was held:

"Where a corporation, which owned a number of ships, leased them to another corporation, which had a small capital stock, and which was controlled by the same officers and directors, and 90 per cent. of whose stock was owned by the same stockholders, at a rental which, though more than nominal, was far below the value of the ships, the owning corporation so far participated in the contracts of leasing corporations as to be liable for their breach."

In the body of the opinion the court says:

"Is the Luckenbach Company liable for the default of the Luckenbach Steamship Company?

"From the statements and admissions in their respective answers these facts appear: The Luckenbach Steamship Company has a capital of only $10,000. The Luckenbach Company, also a Delaware corporation, is capitalized at $800,000. They have the same directors and the same officers, and

Edgar F. Luckenbach, who was president of and personally managed both companies, owns 94 per cent of the stock of the Luckenbach Steamship Company, and almost 90 per cent of the stock of the Luckenbach Company. The latter company owns all or most of the steamers referred to in the record, some eight or nine in number. By contracts of May 1, July 1, and October 1, 1915, copies of which are annexed to the libel, these steamers were leased to the steamship company for terms running into the year 1926, and upon terms which, though something more than nominal, are obviously far below their rental value.

"Putting aside any inquiry into the motive for this arrangement, we think it too plain for serious question that the facts here considered show such identity of the two corporations, or at least give rise to such a strong presumption of their identity as warrants the conclusion that the Luckenbach Company is equally responsible with the steamship company for the breach by the latter of its contract with the appellee. For all practical purposes the two concerns are one, and it would be unconscionable to allow the owner of this fleet of steamers, worth millions of dollars, to escape liability because it had turned them over a year before to a $10,000 corporation, which is simply itself in another form."

We do not rest our case upon the ownership of all the stock of the Gulf Lines by the Chicago, Rock Island & Pacific Railway Company, but call particular attention to the following facts:

(1) The sworn annual reports of the Chicago,

Rock Island & Pacific Railway Company filed with the Corporation Commission for the years 1919 and 1920, showing the Chicago, Rock Island & Pacific Railway Company to have the "control" of the Gulf Lines—to what extent—100%—not alone the ownership of its stocks and bonds, but 100% control.

(2) The same train crews—the same trains—operate over the Gulf Lines in Texas without interruption or change at either the New Mexico-Texas state line or the Oklahoma-Texas state line.

(3) The dispatcher at Amarillo operates and directs the movement of trains over the lines in New Mexico, Texas, and in Oklahoma as far east as Sayre.

(4) Through tickets are sold from Oklahoma City to Amarillo, Texas, and Tucumcari, New Mexico.

(5) The Gulf Lines are a part of the Rock Island System.

(6) Advertisements are carried in a time table folder gotten out by the Chicago, Rock Island & Pacific Railway Company, in which the public is advised that *the Rock Island is unique in that, with its own rails, it serves the broad rich territory bordered on the north by Lake Michigan, on the east by the Mississippi River, on the west by the Rocky Mountains, and on the south by the Gulf of Mexico and the Republic of Mexico.*

(7) J. E. Gorman is president of both the Chicago Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf Railway Company.

(8) Mr. Warner, with headquarters at El Reno, Oklahoma, is vice-president of the Chicago, Rock Island & Gulf Railway Company and manager of the second district of the Chicago, Rock Island & Pacific Railway Company.

(9) The second district of the Chicago, Rock Island & Pacific Railway Company comprises all of the lines of railroad in Texas, Tennessee, Louisiana, Arkansas, Oklahoma, New Mexico, and a part of the lines in Kansas and Missouri.

(10) Among the lines in Texas which form a portion of the jurisdiction of the second district under Mr. Warner, with headquarters at El Reno, Oklahoma, are the Chicago, Rock Island & Gulf Lines.

(11) The arrangements for obtaining cars for the transportation of cattle were made with a Mr. Peterson, of Amarillo, Texas, live stock agent, who obtained his authority from the dispatcher at El Reno, Oklahoma.

(12) Arrangements for the loading of the cattle at Campana, New Mexico, were made with the joint agent of the Chicago, Rock Island & Pacific Railway

Company, and the El Paso & Southwestern Railway Company at Tucumcari, New Mexico, who promised that the cattle would move out of Tucumcari on the evening of January 6, 1920, and who advised Grover B. Hill, "If I tell you to load those cattle, we will haul them out." It was this same agent, acting for the Chicago, Rock Island & Pacific Railway Company, who informed Mr. Hill when the cattle reached Tucumcari on the evening of January 6, that the train had been annulled. This action on the part of the Chicago, Rock Island & Pacific Railway Company started the delay which finally resulted in more than seventy-two hours.

(13) The Chicago, Rock Island & Pacific Railway Company operates the Texas lines through its agents in Texas (see testimony of Mr. Grimes, 57).

(14) The existence of the Gulf Lines in Texas is only a legal excuse to comply with the Texas laws (see testimony of Mr. Grimes, 57).

(15) Claim settlements in Texas are made upon authority of the Chicago, Rock Island & Pacific Railway Company's offices in Chicago.

(16) Time Table No. 50, Exhibit K, shows a list of stations between Memphis, Tennessee, and Tucumcari, New Mexico, and the time schedule of its trains.

The foregoing facts, clearly established by the evidence in this case, leaves no room for doubt, in our judgment, that the Gulf Lines in Texas are operated and controlled by the Chicago, Rock Island & Pacific Railway Company when not under federal control, and we think it is clearly settled by the expressions found in the opinion of this court in the *Missouri Pacific R. Co.* v. *Ault* case, that the agent for the United States Railroad Administration would be liable in the same manner as if the carriers were in charge of and operating the respective lines of railway.

Another case having a distinct bearing upon the question under consideration is *United States* v. *Delaware, Lackawanna & Western R. R. Co. et al.*, 238 U. S. 516, 59 Law. ed. 1438. In that case the court had up for consideration the commodity clause of the Hepburn Act of 1906, 34 Stat. L. 584, chap. 3591 (Compiled Statues 1913, par. 8563), which statute made it unlawful for a carrier to haul its own coal beyond the limits of a state; it was said:

> "But the decisions construing the statute recognize that one corporation can be an agent for another corporation, and that by means of stock ownership one of such companies may be converted into a mere agent or instrumentality of the other. *United States* v. *Lehigh Valley R. Co.*, 220 U. S.

257, 273, 55 L. ed. 458, 463, 31 Sup. Ct. Rep. 387. And this use of one by the other—or this power of one over the other—does not depend upon control by virtue of the fact that stock therein is held by the railroad company or by its shareholders. For dominance of the coal company may be secured by a carrier (*New York, N. H. & H. R. Co.* v. *Interstate Commerce Commission*, 200 U. S. 363, 50 L. ed. 515, 26 Sup. Ct. Rep. 272) not only by an express contract of agency, but by any contract which, in its practical operation, gives to the railroad company a control or an 'interest, direct, or indirect,' in the coal sold, at the mouth of the mines.

"Assuming, then, that the incorporation and organization of the coal company under the auspices of the railroad company was legal; assuming that the election of railroad officers as the first managers of the coal company was not illegal; assuming that, as officers of the railroad, they could contract with themselves as officers of the coal company; assuming that at the time of organization it was not unlawful for the railroad company and the coal company not only to have officers but offices in common; and finally assuming that all these facts together did not, in and of themselves, establish an identity of corporate interest,—still these facts, taken together, are most significant. They at least prove that the relation between the parties was so friendly that they were not trading at arm's length. And the further fact that one of the parties was under a statutory disability as to hauling coal makes it necessary to carefully scrutinize their arrangement in order to determine whether it was a bona fide and lawful contract of sale, or a means by which the railroad, though parting with the legal title, retained an interest and control in what had been sold."

Since the Supreme Court of Oklahoma rendered its decision in this case, and since this appeal has been perfected, another case has been decided by the state court involving the same questions that were briefed by the parties in this case. In *Davis, Director General* v. *Griffith*, 106 Okla. 1, 230 Pac. 262, it was held:

> "It was not the intention of the Federal Control Act (Comp. St. 1918, Comp. St. Ann. Supp. 1919, Secs. 3115¾a-3115¾p) to change the rights of litigants, nor to alter or abrogate the rules of evidence by which those rights might be established, as theretofore recognized and enforced in the various states, unless the existence of such rights and the means of their enforcement ran counter to the paramount purposes of the government in its mobilization of the country's resources. *Mo. Pac. Ry. Co.* v. *Ault*, 256 U. S. 554, 41 S. Ct. 593, 65 L. ed. 1087; *Dahn* v. *Davis*, 258 U. S. 421, 42 S. Ct. 320, 66 L. ed. 696. *Therefore a rule of law recognized and enforced in this state prior to federal control, which rendered a dominant carrier liable for negligence occurring on one of its subservient lines, and the rule of evidence and degree of proof by which such dominant control might be shown, were not abrogated by the Federal Control Act, because not obnoxious to any purpose of the government.*" (italics ours).

The facts in that case are almost identical with the facts in the case at bar, and this court denied a petition for writ of certiorari on May 11, 1925.

No argument was presented in the state court by plaintiff in error that the verdict of the jury is unjust, and we take it that none could be presented, in view of the evidence as to the extent of damages sustained by the defendants in error.

Conclusion.

We submit that in view of what is disclosed by the transcript of record in this case, and the undisputed evidence as to the absolute control of the Gulf Lines by the Chicago, Rock Island & Pacific Railway Company to the extent of 100%, the facts in this case bring it clearly within the rule laid down in the Sanford and Puckett cases, and particularly the case of *Davis, Director General* v. *Griffith,* 106 Okla. 1, 230 Pac. 262, in which this court denied a petition for writ of certiorari.

We therefore respectfully pray this court that the judgment of the trial court be affirmed, and that this court render such opinion as should have been rendered by the Supreme Court of Oklahoma in affirming the judgment.

Respectfully submitted,

FRED E. SUITS,
C. E. HALL,
Attorneys for Defendants in Error.

Dated this 25th day of September, 1925.